

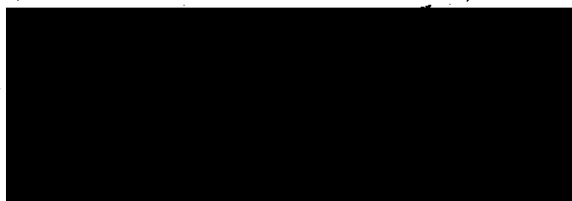


U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: [REDACTED] Office: Nebraska Service Center

Date: AUG 29 2000

IN RE: Applicant [REDACTED]

APPLICATION: Application for Travel Document Pursuant to Section 223 of the Immigration and Nationality Act, 8 U.S.C. 1203

IN BEHALF OF PETITIONER: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The applicant is a native and citizen of India who is seeking to obtain a reentry permit pursuant to section 223 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1203.

The director denied the application after determining that the applicant was not in the United States at the time the application was filed.

On appeal, the applicant states that she mailed her application along with the required fee on July 4, 1998, that it was received by the Service office on July 10, 1998, and that she left the United States on July 10, 1998. She further states that the Service, however, found her application unacceptable and the application and fee were returned to her only on the ground that she mistakenly wrote her foreign address on Part 1 and her U.S. address on Part 2 of the Form I-131. The applicant submits additional evidence.

In pertinent part, section 223 of the Act provides that an alien lawfully admitted for permanent residence who intends to visit abroad and return to the United States to resume that status may make an application for a permit to reenter the United States.

With certain exceptions¹, regulations at 8 C.F.R. 223.2(b) allow for the approval of a reentry permit if the application (Form I-131) is filed by a lawful permanent resident or conditional permanent resident. Additionally, regulations at 8 C.F.R. 223.2(b) require that the application be filed with the Service prior to departure from the United States.

8 C.F.R. 103.2(a)(7)(i) states, in pertinent part:

An application or petition received in a Service office shall be stamped to show the time and date of actual receipt and....shall be regarded as properly filed when so stamped, if it is properly signed and executed and the required filing fee is attached or a waiver of the filing fee is granted. An application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. Rejected

¹See 8 C.F.R. 223.2(c) providing ineligibility where (1) a prior reentry permit is still valid, (2) certain extended absences have been taken by the applicant, or (3) the applicant is entitled to nonimmigrant diplomatic or treaty status and has not submitted the applicable waiver and/or tax exemption form.

applications and petitions, and ones in which the check or other financial instrument used to pay the filing fee is subsequently returned as nonpayable will not retain a filing date....

The record reflects that the application and the required fee were received by the Service on July 10, 1998. On July 24, 1998, the director returned the I-131 application and fee and advised the applicant that she must supply a U.S. mailing address in part one as the Service is prohibited by regulations from sending the reentry permit to a foreign address unless it is a designated American Consulate. She was also requested to submit a legible copy of the front and back of her I-551 Alien Registration Card. The applicant returned the Form I-131 application after correction. The I-131 was subsequently received by the Service on September 8, 1998.

The director, therefore, denied the application after determining that the applicant was not in the United States at the time the application was filed on September 8, 1998.

On appeal, the applicant submits the postal return receipt, PS Form 3811 indicating that the Service received the Form I-131 on July 10, 1998. She also submits her airline tickets reflecting that on July 9, 1998, at 9:40 p.m., she departed from Houston, Texas, enroute to Newark, New Jersey. She claimed that her flight did not depart from the United States until July 10, 1998. She also submits a copy of her passport bearing an entry stamp upon her arrival in Malaysia enroute to India on July 11, 1998.

Regulations at 8 C.F.R. 103.2(a)(7)(i) requires that an application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. The record reflects that the application was originally received by the Service on July 10, 1998. Although the application was properly signed and the required filing fee was attached, the director rejected and returned the application on July 24, 1998. This action of the director, however, is inconsistent with 8 C.F.R. 103.2(a)(7)(i). The application should have been regarded as properly filed on July 10, 1998. The director could then have requested further evidence in accordance with 8 C.F.R. 103.2(b)(8). This regulation states, in pertinent part:

If there is evidence of ineligibility in the record, an application or petition shall be denied on that basis notwithstanding any lack of required initial evidence. If the application or petition was pre-screened by the Service prior to filing and was filed even though the applicant or petitioner was informed that the required initial evidence was missing, the application or petition shall be denied for failure to contain the necessary

evidence. Except as otherwise provided in this chapter, in other instances where there is no evidence of ineligibility, and initial evidence or eligibility information is missing or the Service finds that the evidence submitted either does not fully establish eligibility for the requested benefit or raises underlying questions regarding eligibility, the Service shall request the missing initial evidence, and may request additional evidence....

Accordingly, it is concluded that the applicant was in the United States at the time the application for a permit to reenter the United States was filed with the Service on July 10, 1998. Therefore, the director's decision will be withdrawn and application will be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has met that burden. The appeal will be sustained.

ORDER: The appeal is sustained.